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| APPLICATION NO.             | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|----------------------|---------------------|------------------|
| 10/540,347                  | 06/21/2005  | Robert Fernand Bujau | 006593-2064         | 6408             |
| 33375                       | 7590        | 10/28/2008           |                     |                  |
| THOMPSON HINE LLP           |             |                      |                     |                  |
| Intellectual Property Group |             |                      |                     |                  |
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| DAYTON, OH 45401-8801       |             |                      |                     |                  |
| EXAMINER                    |             |                      |                     |                  |
| ST CLAIR, ANDREW D          |             |                      |                     |                  |
| ART UNIT                    |             | PAPER NUMBER         |                     |                  |
| 3743                        |             |                      |                     |                  |
| MAIL DATE                   |             | DELIVERY MODE        |                     |                  |
| 10/28/2008                  |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Examiner Notes***

1. This Office Action is responsive to the After Final Arguments submitted September 22, 2008.

### ***Response to Arguments***

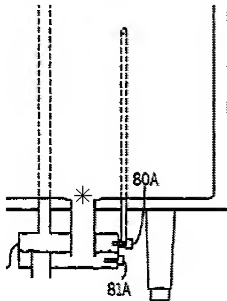
2. In re claims 1-13 and 101, Applicants' arguments are fully considered and responded to below.

First, in response to the Examiner Notes and Interview Summary, Examiner reiterates that DE 19730610 is considered to be material to the patentability of the present application, despite Applicants' arguments which assert that it is not. In particular, the recitation of "a liquid of volume *adapted to vary...*" in the present application does not preclude the application of prior art disclosing a liquid capable of varying.

Second, Applicants state that "the low end of the vent tube 202 of Hanson is never closed by the liquid in the pressure box 200." (Remarks, page 5.) Applicants appear to interpret the claim limitation to require the liquid in the regulation chamber to touch and envelope the lowermost portion of the air admission duct; such a narrow interpretation is not required. The low end of the air admission duct is "closed" from fluid communication with intake line 210. It is also "closed" by the liquid in conjunction with baffle 216 in that it is substantially enveloped and restricted. The dictionary definition of "closed" is "having or forming a boundary or

barrier.”<sup>1</sup> The liquid in pressure box 200 forms a lower barrier for the gas escaping through vent tube 202.

Third, Applicants assert “neither end of this drain extension fits the requirements of the high end of the evacuation tube, which must open out into the evacuation chamber above its high and low levels.” (Remarks, page 6). Examiner disagrees. The high end of the evacuation tube, depicted with a star in the modified figure below, is “opening out [out of the cooking chamber 14a] into the evacuation chamber above the high and low liquid levels,” as required by claim 3.



Modified Figure of Hansen et al. (US 6,987,246)

Fourth, Applicants argue the merits of three pieces of common law cited in MPEP 2144.04 VI, Rearrangement of Parts. (Remarks, page 7). Examiner notes that *In re Japikse* held a change in the arrangement of parts that “would not have modified the operation of the device” was not patentable over prior art showing a slightly different arrangement of parts. Moreover,

<sup>1</sup> closed. (n.d.). *Dictionary.com Unabridged (v 1.1)*. Retrieved October 20, 2008, from Dictionary.com website: <http://dictionary.reference.com/browse/closed>

the beginning of section 2144.04 states "Examples direct to various common practices which the court has held normally require only ordinary skill in the art and hence are considered routine expedients are discussed below. If the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rational to support an obviousness rejection." Examiner thus takes the position that because Applicants have failed to show criticality, it is proper to rely solely on case law to establish what is merely a matter of ordinary skill in the art. Examiner also notes that the "unified structure or function" Applicant argues is not recited in the claims.

Fifth, Applicants argue that "sensor 85A is nowhere near the inlet tube 208 of Hansen." (Remarks, page 7.) While the sensor does appear to be at least somewhat near the inlet tube, this is immaterial. Claim 6 states "a second temperature probe for measuring the temperature of the gas coming into the enclosure via the air inlet." The recitation "for measure" is considered to be a statement of intended use. A recitation of the intended use of the claimed invention must result in a definite structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use it is considered to disclose the claim limitation. In the instant case, temperature sensor 85A is capable of measuring the temperature of the air introduced via the air inlet.

Lastly, Applicants make an argument with respect to the term "siphon." (Remarks, page 8.) The pipe pictured in Violi is clearly a siphon, its function need not be described both because one of ordinary skill in the art would understand it, and because the function recited in claim 13

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is a functional claim limitation. The pipe of Violi need only be capable of performing the recited function, which it is.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW ST CLAIR whose telephone number is (571)270-3513. The examiner can normally be reached on Monday - Friday, 8 a.m. - 6 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew St.Clair/  
Examiner, Art Unit 3743

/Kenneth B Rinehart/  
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